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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
WILHOIT WATER COMPANY, INC., YAVAPAI
MOBILE HOME ESTATES SYSTEM, FOR AN
EMERGENCY RATE INCREASE.

DOCKET NO. W-02065A-08-0592

PROCEDURAL ORDER

BY THE COMMISSION:

On December 10, 2008, Wilhoit Water Company, Inc., Yavapai Mobile Home Estates System ("Company" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application requesting an emergency rate increase of approximately 100 percent by doubling its base rates and its gallonage charges because the Company indicated that, due to a lack of potable water production from its two wells, all of its water is being purchased from the City of Prescott ("City") ("Application"). The current cost of water purchased from the City greatly exceeds the Company's current revenues from its customers.

On December 29, 2008, by Procedural Order, a hearing was scheduled on February 26, 2009, on the above-captioned matter.

On January 9, 2009, the City filed a copy of a letter to the Company indicating that the City intends to discontinue water service to the Applicant.

On January 28, 2009, the Company's attorney filed a letter in the docket which indicates that the Company has failed to provide public notice of the proceeding as ordered and requested that the hearing date be vacated, and that a new hearing and dates for public notice be ordered.

On January 30, 2009, by Procedural Order, the hearing was vacated and a status conference was scheduled for February 12, 2009.

On February 12, 2009, at the status conference, the Company's consultant appeared without the Company's attorney who was at another proceeding, and the Utilities Division ("Staff") appeared

1 with counsel. Since the Company failed to appear with counsel, the proceeding was recessed and the
2 proceeding continued.

3 On February 17, 2009, another status conference was scheduled on February 26, 2009, so that
4 the Company could appear with counsel.

5 On February 26, 2009, at the status conference, both Staff and the Company appeared with
6 counsel. The parties discussed issues pending in the proceeding as follows: official confirmation
7 from the City that it would continue to provide water to the Company for its customers; official
8 confirmation from the Yavapai County Treasurer's office that an acceptable resolution of the
9 Company's back tax problem had been settled and a payment schedule established; the Company's
10 possibly seeking Commission modification of Decision No. 70384 (June 13, 2008) pursuant to A.R.S.
11 § 40-252 to request approval of an Arsenic Remediation Surcharge Mechanism ("ARSM") in place of
12 the Arsenic Cost Recovery Mechanism ("ACRM") previously approved; the possible retention of an
13 interim manager; and whether additional action should be pursued by Staff against the Company. As a
14 result, the parties were directed to file responses by March 6, 2009, to explore a resolution of the
15 issues prior to the scheduling of a hearing on the Application.

16 On March 6, 2009, the Company and Staff filed their responses to the issues raised at the status
17 conference. The Company's response included a copy of a Company letter sent to the City expressing
18 the Company's desire for a continuation by the City to supply the Company with water. The
19 Company also included a copy of an email offer to the Yavapai County Treasurer to compromise the
20 back taxes due and a payment schedule. However, the Company failed to provide a written response
21 from either the City or the County to the Company's proposals. There was no indication whether the
22 Company would seek the Commission's modification of Decision No. 70384, but the Company did
23 indicate that it does not believe there are sufficient resources to support an interim manager.

24 Staff's response described in detail the Company's failure to comply with Decision No. 70384
25 and pointed out that the Company has not produced any documentary evidence from the City that it
26 will continue to provide the Company with water. Staff further discussed the merits of the Company
27 seeking Commission approval to modify Decision No. 70384 to enable the Company to utilize an
28 ARSM in place of the previously approved ACRM. Lastly, Staff indicated that it believes that further

1 action against the Company and retaining an interim manager to operate the Company could
2 “exacerbate” the situation rather than help resolve its problems.

3 On March 17, 2009, the Company, pursuant to A.R.S. § 40-252, filed a request that the
4 Commission amend Decision No. 70384 to replace the previously approved ACRM that was to be
5 utilized to recover the cost for the installation of its arsenic remediation system with a long-term loan
6 from the Water Infrastructure Authority (“WIFA”) to fund the estimated costs of \$320,000 for the
7 arsenic remediation system using an ARSM. The Company also filed a new financing application in
8 Docket No. W-02065A-09-0123 for Commission approval of the financing required for the arsenic
9 remediation system. This docket was subsequently consolidated by Procedural Order with the
10 reopening of Decision No. 70384, which the Company is requesting the Commission amend in Docket
11 No. W-02065A-07-0308, et al. By Procedural Order, an additional status conference was scheduled
12 on April 2, 2009, in this proceeding.

13 On April 2, 2009, Staff and the Company appeared with counsel. The outstanding issues were
14 further discussed by the parties. The Company indicated that it was in the process of preparing an
15 additional filing to verify the resolution of its delinquent property tax situation in Yavapai and
16 Maricopa Counties. The Company also had received an email from a representative of the City of
17 Prescott indicating that it would continue providing water so long as the Company was moving
18 forward on its plan to solve its arsenic problem, and was seeking Commission approval to amend
19 Decision No. 70384 to secure approval of an ARSM in place of the ACRM.

20 On April 6, 2009, the Company filed a Supplemental Report which included documentation
21 that the Company is in the process of resolving its delinquent tax issues in Yavapai County and in
22 Maricopa County where the issue of delinquent taxes has been pending for a number of years in
23 Docket No. W-2065A-03-0490.¹

24 On April 20, 2009, the Company filed a second Supplemental Report which contained a signed
25 statement from the Yavapai County Treasurer stating that no enforcement action would be taken by
26 his office so long as payments were being made by the Company pursuant to the terms of its

27 ¹ This proceeding involves an application for Commission approval for the sale of the Company’s Glenarm Farms system
28 to the City of Avondale and for the cancellation of that portion of its Certificate of Convenience and Necessity for the
provision of water service to that area.

1 agreement with the Yavapai County Treasurer's office.

2 On May 6, 2009, at a procedural conference in Docket No. W-02065A-07-0308, et al., the
3 Applicant and Staff appeared with counsel. The parties discussed a methodology for amending
4 Decision No. 70384 in the light of the Company's recent financing application for the Commission's
5 approval of long-term debt of a WIFA loan totaling \$320,000 which is to be paid for by utilizing an
6 ASRM in place of the ACRM originally approved in the Decision. The parties further discussed the
7 following: the time required by Staff for the preparation of a Staff Report on the new financing
8 application by the Company in Docket No. W-02065A-09-0123; the time allowed for a Company
9 response; the requirement for a proper form of public notice; and the probable need for a brief hearing
10 on the application. Additionally, it was decided that further processing of the Company's emergency
11 rate application herein would be suspended pending a resolution of the amendment of
12 Decision No. 70384 and pending Commission action on the financing application in Docket
13 No. W-02065A-09-0123.

14 On May 14, 2009, by Procedural Order, a hearing was scheduled for July 9, 2009, on the
15 amendment of Decision No. 70384 and Company's new financing application.

16 Accordingly, further action in this proceeding should be suspended pending the outcome of the
17 proceeding to amend Decision No. 70384 and Commission action on the financing application in
18 Docket No. W-02065A-09-0123

19 IT IS THEREFORE ORDERED that that the further action in this proceeding shall be
20 suspended pending the amendment of Decision No. 70384 and pending approval of the financing
21 application in Docket No. W-02065A-09-0123.

22 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules of
23 the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission
24 *pro hac vice*.

25 ...


26 ...

27 ...

28

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing

DATED this 15TH day, of May, 2009.




MARC E. STERN
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 15th day of May, 2009 to:

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By: 
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Secretary to Marc E. Stern